

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF:

**GABRIELA ROMO AND
DAVID LOUIS ANTONIOLI**

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Board of Appeals No. S-2848
(OZAH No. 12-38)

Petitioners
Gabriela Romo and
David Louis Antonioli
For the Petition

Lynn McCreary
Department of Housing and
Community Affairs

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Before: Tammy J. CitaraManis, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION
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I. STATEMENT OF THE CASE

In Petition No. S-2848, Petitioners, Gabriela Romo and David Louis Antonioli, seek approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property located at 6005 Overlea Road, Bethesda, Maryland in the R-60 (Residential, One-family, Detached) Zone. The legal description of the property is Lot 25, Block 21, in the Sumner Subdivision. The tax account number is 01869821.

On June 15, 2012, the Board of Appeals issued a notice of a public hearing before the Hearing Examiner for November 8, 2012. Exhibit 11(b). Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report dated November 2, 2012, recommended approval of the special exception with five (5) conditions, two of which are noted below (Exhibit 15):¹

Condition No. 4: The applicant must provide a clear path of access to the outside from the accessory apartment other than through the garage door. An egress entry door is required. It should be consistent with the requirements of the Department of Housing and Community Affairs memorandum dated October 9, 2012, which is attached. The appearance of the one-family home must be preserved; and

Condition No. 5: Provide adequate outdoor lighting for the entrance to the accessory unit, and for the walking route between the street and entrance.

Department of Housing and Community Affairs (DHCA) Housing Code Inspector Lynn McCreary (Ms. McCreary) inspected the property on October 8, 2012, and reported her findings in a memorandum dated October 9, 2012. Exhibit 14. Ms. McCreary reported that the accessory apartment is approximately 434 square feet in size, 338 square feet of which is habitable space.

¹ The Technical Staff report is frequently quoted and paraphrased herein. As noted on page 5 of this report, Technical Staff submitted a revised report dated March 22, 2013, recommending approval with five conditions. Exhibit 38.

Based on the habitable space, Ms. McCreary determined that no more than two (2) people may occupy the accessory apartment. Ms. McCreary also reported (Exhibit 14):²

Item No. 3: Accessory Apartment standards require a clear path of access to the outside. The current entry to the unit is through the garage. An egress entry door is required. The appearance of the single family house must be preserved.

In a memorandum to Ms. McCreary dated November 6, 2012, Ada DeJesus of DHCA, Licensing and Registration Unit (Ms. DeJesus), reported that there is one accessory apartment (revocation pending) and no registered living units (RLU's) in the vicinity of the subject property. Exhibit 16.

The hearing went forward as scheduled on November 8, 2012, and Petitioners, Gabriela Romo and David Louis Antonioli, appeared *pro se*. Petitioners executed an Affidavit of Posting (Exhibit 18) and submitted a copy of the deed to the property (Exhibit 17). Petitioners testified in support of the petition and adopted the findings in the Technical Staff Report (Exhibit 15) and Housing Code Inspector's Report (Exhibit 14), as their own evidence and agreed to meet all the conditions set forth in both reports. Tr. 13-14.

Petitioners requested that the record remain open until January 2, 2012, to allow them additional time to file an amended Petition and revised plans consistent with the conditions of approval noted in the Technical Staff's November 2, 2012, report (Exhibit 15) and as required by DHCA (Exhibit 14). Housing Code Inspector Ms. McCreary also testified. No opposition appeared at the hearing.

² The Hearing Examiner notes that specific dwelling unit requirements and standards for accessory apartments under Zoning Ordinance § 59-G-2.00 only require that that "[a]ny separate entrance must be located so that the appearance of a single-family dwelling is preserved." Section R311.1 of the building code states: "All *dwelling*s shall be provided with a means of egress as provided in this section. The means of egress shall provide a continuous and unobstructed path of vertical and horizontal egress travel from all portions of the dwelling to the exterior of the *dwelling* at the required egress door without requiring travel through a garage."

On December 17, 2012, Petitioners submitted the first of three amendments to the Petition and revised plans. Exhibit 20(a)-(c).³ Petitioner revised the Site Plan (Exhibit 20(a)(i)), elevated drawings (Exhibit 20(a)(ii)) and Floor Plan (Exhibit 20(b)), showing an exterior egress entrance and a 4' wide below-grade stairway located on the south side of the dwelling where the egress window was to be installed. The stairway included top and bottom landings and a railing. The Landscape and Lighting Plan was revised to show a flagstone walkway from the front sidewalk to the side entrance and additional exterior lighting to illuminate the walkway and entrance. Exhibit 20(c). The record closed as scheduled on January 2, 2013.

Based on a request from Technical Staff, the record was reopened by Order dated January 4, 2013, to provide Technical Staff with additional time to review the December 17, 2013, revised plans and submit a revised Technical Staff report. The record was scheduled to close January 28, 2013. Exhibits 22 and 24.

Petitioners were advised that the proposed 4' wide below-grade stairway exceeded the 3' maximum allowed for projections into the minimum side yard setback, pursuant to Zoning Ordinance § 59-B-3.1(b), and that a variance might be required. Exhibit 28. Technical Staff delayed submitting a revised Technical Staff report to provide Petitioners with additional time to determine whether they would apply for a variance or submit revised plans that meet the development standards for projections into the side yard setback as provided in Section 59-B-3.1(b). Exhibit 25. By Order dated January 28, 2013, the closing of the record was extended to February 12, 2013. Exhibit 26. On February 11, 2013, Petitioners submitted the second amended Petition and revised plans (Exhibit 27 (a)-(b)), reducing the width of the below-grade stairway

³ Technical Staff identified the December 17, 2012, amended Petition and revised plans as "Submittal A" in the revised Technical Staff report dated March 22, 2013. Exhibit 38.

from 4' to 2.9'.⁴ The closing of the record was extended by Order dated February 12, 2013, to April 1, 2013. Exhibit 34.

Technical staff submitted a revised report, originally dated March 13, 2013 (Exhibit 35), and resubmitted with "Revisions for clarification [to pages] 13, 17 [and 25]" dated March 22, 2013 (Exhibit 38), recommending approval with five conditions, two of which are noted below:⁵

Condition No. 4: The accessory apartment entrance and associated projections such as the below grade steps, should be revised to meet development standards in the zone or a variance should be obtained. The drawings should also show how drainage will be addressed, and how light fixtures will be of a residential character. Any pursuit of a variance should include evidence of coordination with the adjacent property owner concerning that variance request.

Condition No. 5. Limit the maximum square footage of the accessory apartment to 440 square feet.

Prior to the close of the record, Petitioners submitted a series of e-mail correspondence with Technical Staff collectively identified as Exhibit 39, addressing the need for a variance if Petitioners were to submit revised plans showing a 3' wide below-grade stairway with a 1' wide retaining wall. Petitioners informed Technical Staff that a licensed contractor received verbal confirmation from a DPS staff member that DPS "would approve an areaway [exterior stairs] protruding into the 8' setback without the need for a variance [and approval] would be contingent on [Petitioner] submitting a formal building permit application and scale drawings showing a 3' wide exterior below-grade stairway with a 1' wide retaining wall and the requisite specifications [for] the landing." Technical Staff suggested that the new proposal would not meet

⁴ Technical Staff identified the February 11, 2013, amended Petition and revised plans as "Submittal B" in the revised Technical Staff report dated March 22, 2013. Exhibit 38. The building code requires that the exterior stairway have a minimum 36 inch clear width.

⁵ The revisions to the noted pages were necessary to clarify that Technical Staff's revised report was based on a full review of the revised plans submitted on December 17, 2012 (Exhibit 20(a)-(c)) and February 11, 2013 (Exhibit 27(a)-(b)). Technical Staff summarized the two revised plans as follows (Exhibit 38, p. 18): "The first revised submittal (A) did not meet development standards limiting projections into the side yard, but met the building code. Whereas the second revised submittal (B) did not meet the building code for the clear width of the entry stairs, but did meet development standards concerning projections into the side yard."

the development standards for projections because of the 1' retaining wall. Technical Staff further advised Petitioners that "[a]ny interpretation or decision [from DPS regarding] development standards in the zone, should be in writing" Exhibit 39.

The record closed as scheduled on April 1, 2013. The record was reopened by Order on April 3, 2013, and scheduled to close April 12, 2013, to provide Petitioner with additional time to submit revised plans and a letter or a building permit from DPS confirming the revised plans met the development standards for projections without the need to obtain a variance. Exhibit 40.

Prior to the close of the record, Petitioners submitted a final amended Petition and revised plans (e.g., detailed construction drawings and revised Floor Plan) showing a 3' wide below-grade exterior stairway and an 8 inch wide retaining wall with railings to the left side of the house. The revised plan also shows a shed roof over the 3'x 7' landing and a sump pump for drainage. Exhibits 41(b) and 42(a)-(b).⁶ Based on the revised plans, DPS issued a building permit (Permit No.: 631162) on April 10, 2013. Exhibit 41(a).

In an e-mail dated April 11, 2013, Petitioners' contractor, Brian Titus, reported receiving a verbal opinion from DPS staff, Clarke Camp, that the revised plans should be approved as designed.⁷ He noted that Mr. Camp explained that the 8 inch wide retaining wall "will [not] count against the allowed 3' encroachment into the side yard setback . . . because it is largely underground, and the railing around the areaway is not an issue because the County permits fences to be built on the property line []." Exhibit 43.

⁶ Petitioners' contractor, Brian Titus, hand delivered the construction drawings and a copy of the building permit to OZAH on April 10, 2013 (Exhibit 41(a)-(b)), and submitted an electronic copy of the same documents by e-mail dated April 11, 2013 (Exhibit 43).

⁷ Mr. Clarke Camp is a DPS Permitting Services Specialist with Division of Building Construction.

Based on a request from the Hearing Examiner, Mr. Camp submitted an e-mail confirming that the information contained in Mr. Titus' e-mail dated April 11, 2013 (Exhibit 43), was accurate and provided the following explanation (Exhibit 44):

[Section] 59-B-3.1(b) of the Montgomery County Zoning Ordinance allows an exterior stairway to project a maximum of 3' into a minimum side yard setback. It is our policy to exclude the retaining wall portion of an areaway from this 3' [maximum]. Mr. Titus is correct in stating that we consider the wall and guardrail of an areaway no different than a retaining wall with a fence, which can be located on a property line with no setback required.

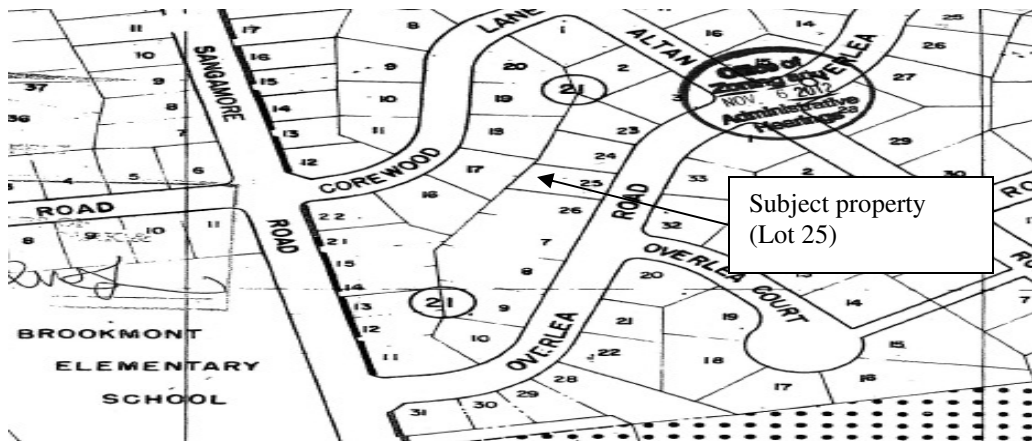
Technical Staff reviewed the revised plans and building permit. Technical Staff noted that the documents submitted appeared to be in order and no further comment from Staff was needed. Exhibit 45. The record closed as scheduled on April 12, 2013.

There was no opposition to this special exception. Petitioners' submission of revised plans, a building permit issued April 10, 2013, and written confirmation from DPS that the retaining wall is not counted as part of the 3' maximum projection allowed in the minimum side yard setback pursuant to Section 59-B-3.1(b), and for the reasons set forth below, the Hearing Examiner recommends approval of the requested special exception, subject to the conditions set forth in Section V of this Report.

II. FACTUAL BACKGROUND

A. The Subject Property and Its Current Use

The subject property is located at 6005 Overlea Road, Bethesda, Maryland, in the Sumner Subdivision. It is zoned R-60. The property is an 8,659 square foot interior lot located on the west side of Overlea Road just northwest of Overlea Court and between Baltan Road to the north and Sangamore Road to the south as shown (next page) on the Zoning Map of the area (Exhibit 16(a)).



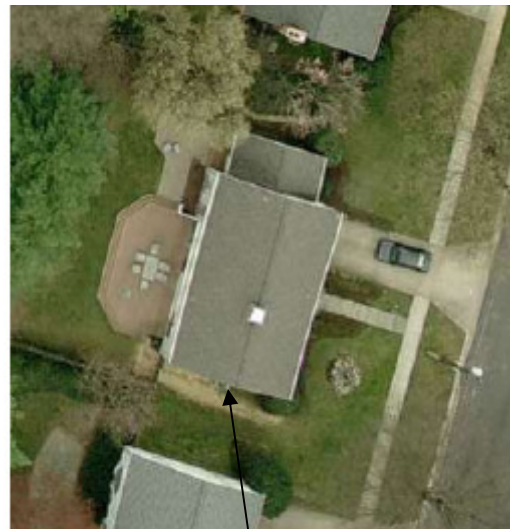
Technical Staff described the property as follows (Exhibit 38, p. 4):

According to State of Maryland tax records, the existing two and a half story house was constructed in 1982 and has an enclosed area of 2,796 square feet. The house is located on Overlea Road between Sangamore Road and Baltan Road. The yard is landscaped with trees and shrubs. The site has its sole vehicular access point from Overlea Road. There is a one car garage. There is a driveway with adequate space for parking two vehicles. There is also on-street parking available on Overlea Road.

Technical Staff provided the following front and aerial photographs of the property are shown below (Exhibit 38, p. 6).

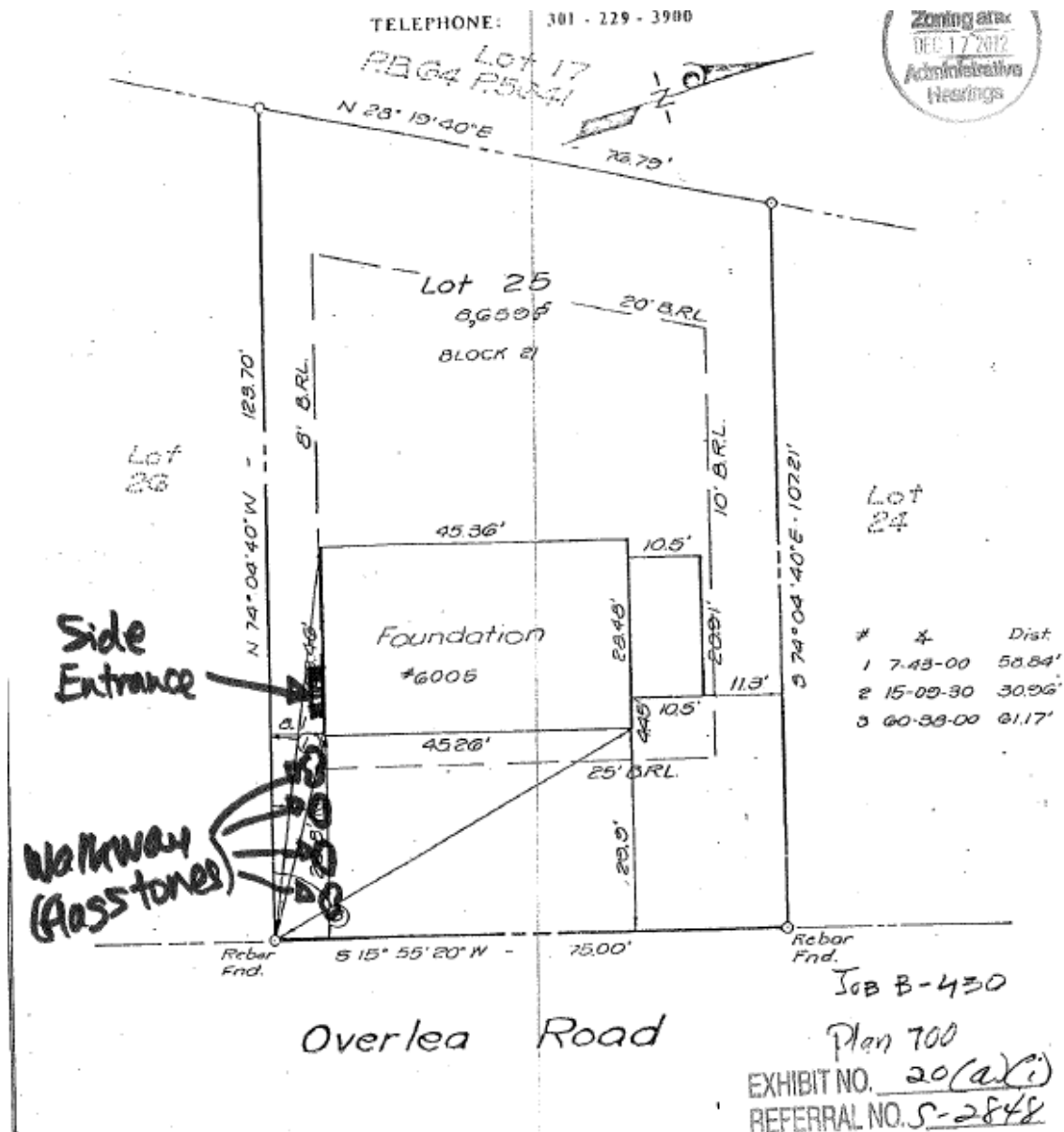


Front of house



Proposed location for Accessory apartment entrance

The Site Plan for the property (Exhibit 4) modified to show the location of the proposed side entrance and walkway to the accessory apartment is shown below:



B. The Surrounding Neighborhood

Technical Staff defined the general neighborhood, which consists of approximately 50 one-family detached homes in the R-60 Zone, as generally bound by Corewood Lane to the

northwest, Sangamore Road to the west, Baltan Road to the east, and a group of townhouses and garden apartments, access of which is via Sentinel Drive, to the south. Exhibit 38, p. 4. Having no evidence to the contrary, the Hearing Examiner accepts Staff's definition of the general neighborhood.

The neighborhood boundary, which is depicted with a solid line on the aerial location map of the area (shown below), has been drawn by Technical Staff to include any nearby properties that may be affected by a potential increase in density or traffic:



Based on a combined reading of the reports from Technical Staff (Exhibit 38) and DHCA, Licensing and Registration, (Exhibit 16), there are no accessory apartments or registered licensed units (RLU's) located within the staff-defined neighborhood. However, DHCA reported one accessory apartment which is located 0.75 miles south of Petitioners' property and is pending revocation from the Board of Appeals.

Thus, considering its location and pending revocation of approval for the existing accessory apartment, the Hearing Examiner concurs with Technical Staff's conclusion that the

addition of an accessory apartment special exception use at the subject property will not result in an excessive concentration of similar uses or adversely affect the residential character of the neighborhood.

C. The Master Plan

The subject property lies within the geographic area covered by the *Bethesda-Chevy Chase Master Plan*, approved and adopted in April 1990. Technical Staff advises that there are no Master Plan recommendations relevant to this site. However, Staff noted that a stated goal of the Master Plan is to “[p]rovide for a balanced housing supply so that persons of varying income levels, age, backgrounds, and household characteristics may find suitable housing appropriate to their needs.” Exhibit 38, p. 11. The Master Plan supports “special exception uses that contribute to the housing objectives in the Master Plan.” Exhibit 8, p. 31. More specifically, “[t]he Plan also endorses expanding choices of housing types by provision of accessory apartments.” Exhibit 8, p. 33. Technical Staff also noted that the proposed special exception “furthers the Plan’s general guidance to provide affordable housing in the form of accessory units.” Exhibit 38, p. 11. Thus, Technical Staff found the proposed application is consistent with the *Bethesda-Chevy Chase Master Plan*. Exhibit 38, p. 11.

The Hearing Examiner concurs with Technical Staff because the Master Plan supports the R-60 zoning in which accessory apartments are a special exception use. As reported by Technical Staff, the proposed exterior entrance to the accessory apartment on the south side of the dwelling is “typical of an auxiliary entrance to a main house.” Exhibit 38, p. 18. Thus, the proposed entrance will preserve the residential appearance of the dwelling and surrounding neighborhood. Further, the driveway can accommodate two vehicles and there “are adequate choices to ensure sufficient neighborhood parking even with the existence of [the] additional

apartment on the block.” *Id.* Therefore, the existing one-family dwelling will retain the residential appearance and compatibility sought by the Master Plan. Accordingly, the Hearing Examiner concurs with Technical Staff and finds that the proposed use is consistent with the *Bethesda-Chevy Chase Master Plan*.

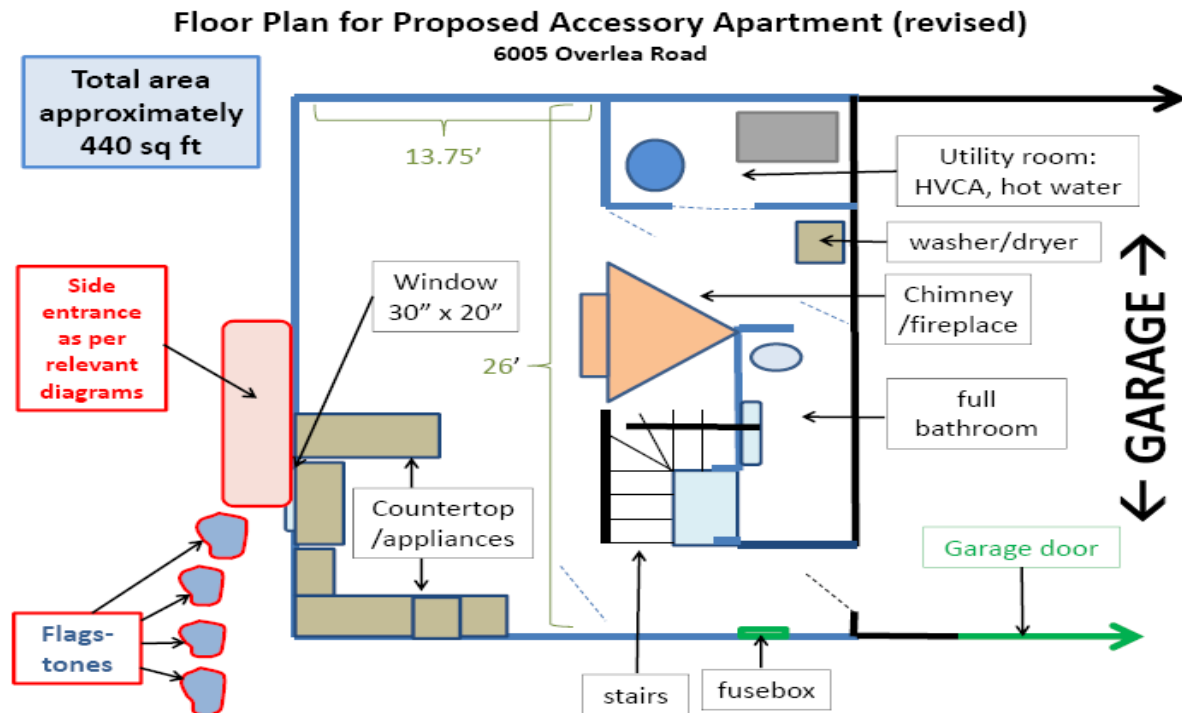
D. The Proposed Use

The Petitioners are seeking approval of a special exception to allow a “studio” apartment located in the basement of their two-story single-family dwelling. The accessory apartment is approximately 434 square feet in size, 338 square feet of which DHCA found to be habitable space. Based on the habitable space, occupancy of the accessory apartment will be limited to no more than two people. Exhibit 14.

According to the Maryland Department of Taxation and Assessment (SDAT) records for the property, the enclosed floor area for the two-story one-family dwelling is approximately 2,796 square feet. Based on this information, the Hearing Examiner agrees with Technical Staff that the accessory apartment is subordinate to the main dwelling. Exhibit 38, p. 25. Petitioners will occupy the main dwelling. Tr.34.

The accessory apartment main living space is approximately 26’x 13.75’ and includes a full kitchen and living area with a fireplace. Off the living area is a hallway which provides access to the full bath, stacked washer and dryer and utility room. The interior door to the accessory apartment is located off the kitchen area. Technical Staff found that the “apartment is set up to provide all the spaces and facilities necessary for an apartment use.” Exhibit 38, p. 18.

The apartment’s Floor Plan modified to show the accessory apartment side entrance and walkway is shown on the next page (Exhibit 42(b)).



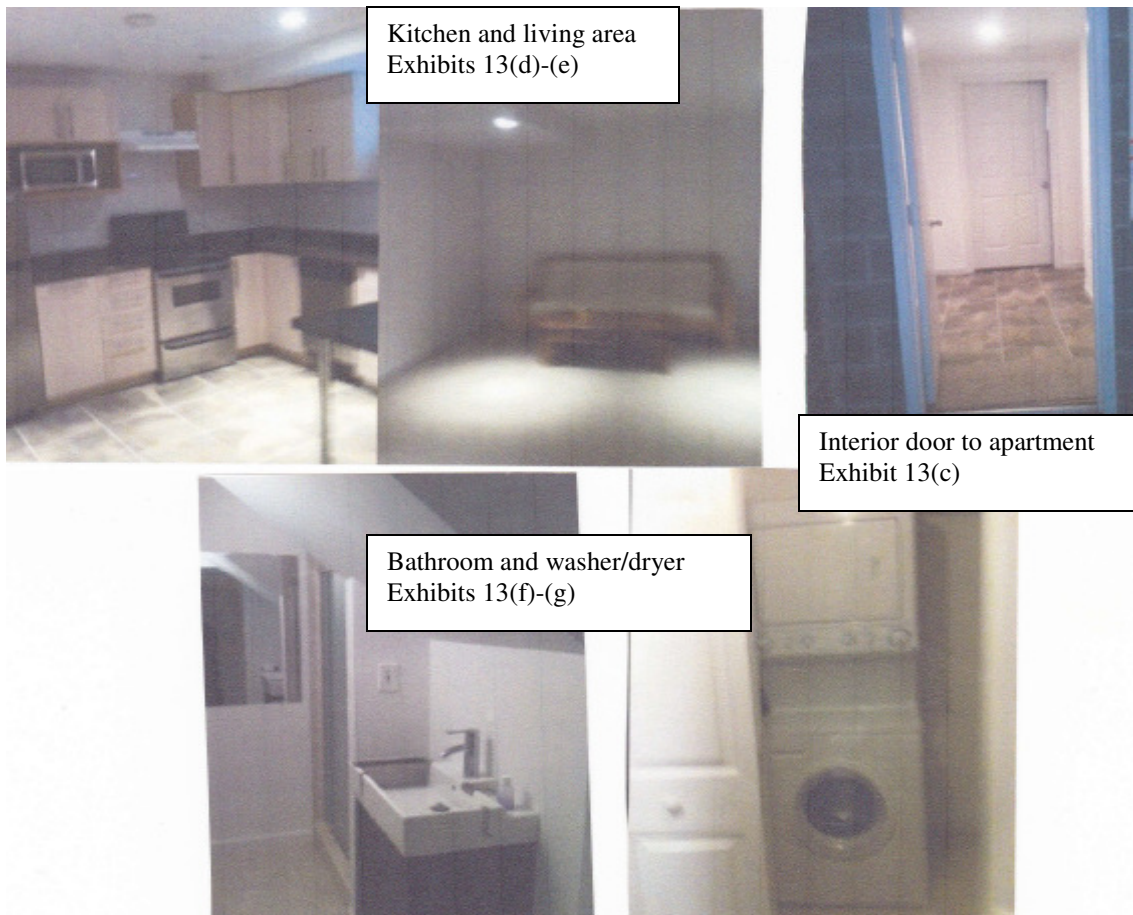
DHCA inspected the property on October 8, 2012, and Housing Code Inspector Lynn McCreary reported her findings in a memorandum dated October 9, 2012 (Exhibit 14). The substance of her report is set forth below:

The preliminary inspection was conducted on October 8, 2012. The Accessory Apartment is located in the cellar of the house. The issues regarding the Accessory Apartment standards are as follows:

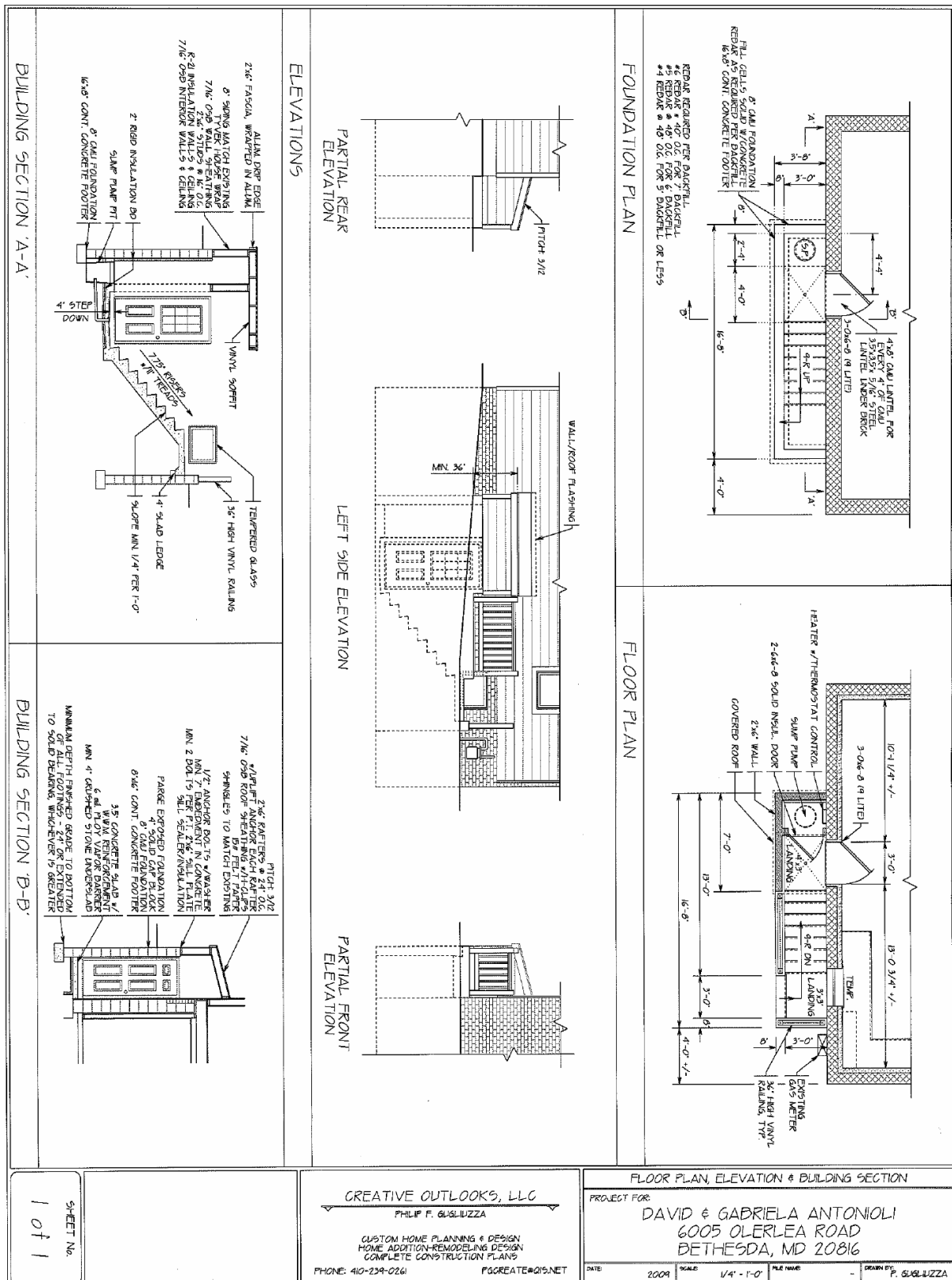
1. The property has a one car garage. The [driveway] will accommodate two additional vehicles parked back to front. There is also on-street parking available.
2. The footprint of the efficiency unit consists of 434 square feet of floor space. There is a total of 338 square feet of habitable space which would allow for the occupancy of 2 people.
3. Accessory Apartment standards require a clear path of access to the outside. The current entry to the unit is through the garage. An egress entry door is required. The appearance of the single family house must be preserved.
4. Relocate the smoke detector away from the kitchen area.

DHCA provided the following photographs of the interior of the accessory apartment

(Exhibits 13 (c)-(g)):



Petitioners amended their Statement in support of their application (Exhibit 3, p. 2) to delete their statement that access to the accessory apartment entrance will be through the garage. Tr. 43. Consistent with the conditions of approval noted in the revised Technical Staff report (Exhibit 38), Petitioner amended the Petition and submitted revised plans showing a separate exterior entrance and a 3' wide below-grade stairway with an 8 inch wide retaining wall and railings located on the south side of the dwelling. The revised plan also shows a shed roof over the 3' x 7' landing and sump pump for drainage as required by Technical Staff. The detailed revised plans are shown on the next page (Exhibit 41(b)).



Based on the revised plans, DPS issued a building permit for the proposed side entrance and below-grade stairway, as shown below (Exhibit 41(a)):



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

BUILDING PERMIT

Issue Date: 04/10/2013

Diane R. Schwartz Jones
Director

Permit No: 631162
 AP Type: BUILDING
 Expires: 04/10/2014
 X Ref:
 Rev. No:
 ID: AC1119878

THIS IS TO CERTIFY THAT: DAVID ANTONIOLI
6005 OVERLEA ROAD
BETHESDA, MD 20816

HAS PERMISSION TO: ALTER SINGLE FAMILY DWELLING

PERMIT CONDITIONS: BASEMENT AIRWAY

MODEL NAME:

PREMISE ADDRESS: 6005 OVERLEA RD
BETHESDA, MD 20816-2453

LOT - BLOCK: 25 - 21 ZONE: ELECTION DISTRICT:

BOND NO.: BOND TYPE:

PERMIT FEE: \$ 209.00 SUBDIVISION: SUMNER PS NUMBER:

TRANSPORTATION IMPACT TAX DUE:

SCHOOLS IMPACT TAX DUE:

SCHOOLS FACILITY PAYMENT DUE:

MUST BE KEPT AT JOB SITE

AN APPROVED FINAL INSPECTION IS REQUIRED PRIOR TO USE OR OCCUPANCY

Every new one- or two-family dwelling, every townhouse and any attached accessory structure must be equipped with a fire sprinkler system. A separate sprinkler permit is required for the installation of the fire sprinkler system.

Many subdivisions and neighborhoods within Montgomery County have private deed restrictions and covenants regulating building construction. Obtaining a building permit does not relieve the property owner of responsibility for complying with applicable covenants.

NOTICE

THIS APPROVAL DOES NOT INCLUDE PLUMBING, GAS PIPING OR ELECTRICAL OR CONSTRUCTION IN ANY DEDICATED RIGHT-OF-WAY.

NOTE

THIS PERMIT DOES NOT INCLUDE APPROVAL FOR ANY ELECTRICAL WORK. YOU MUST HAVE A SEPARATE ELECTRICAL PERMIT TO DO ANY ELECTRICAL WORK.



Director, Department of Permitting Services

255 Rockville Pike, 2nd Floor • Rockville, MD 20850 • (240)777-0311 • (240)777-6256 TTY
www.montgomerycountymd.gov/permitting-services

Mr. Clarke Camp from DPS provide written confirmation via e-mail dated April 11, 2013 that it was the policy of DPS to exclude the retaining wall when considering the 3' maximum projection allowed in the minimum side yard setback as provided in Section 59-B-3.1 (b). He

also noted that the retaining wall and guardrail are “no different than a retaining wall with a fence, which can be located on a property line with no setback required.” Exhibit 44. Thus, the proposed 3’ wide stairway does not exceed the maximum allowed for projections in the side yard setback and complies with the 36 inch clear width minimum required under the building code.

Technical Staff found that the proposed accessory apartment entrance is typical of an auxiliary entrance into a main dwelling and that it preserves the appearance of a one-family dwelling. Exhibit 38, p. 24. Technical Staff also found that the proposed modifications necessary to provide a separate exterior door and stairway on the south side of the dwelling “is compatible with the existing dwelling and surrounding properties.” Exhibit 38, p. 25. The Hearing Examiner agrees with Technical Staff and so finds.

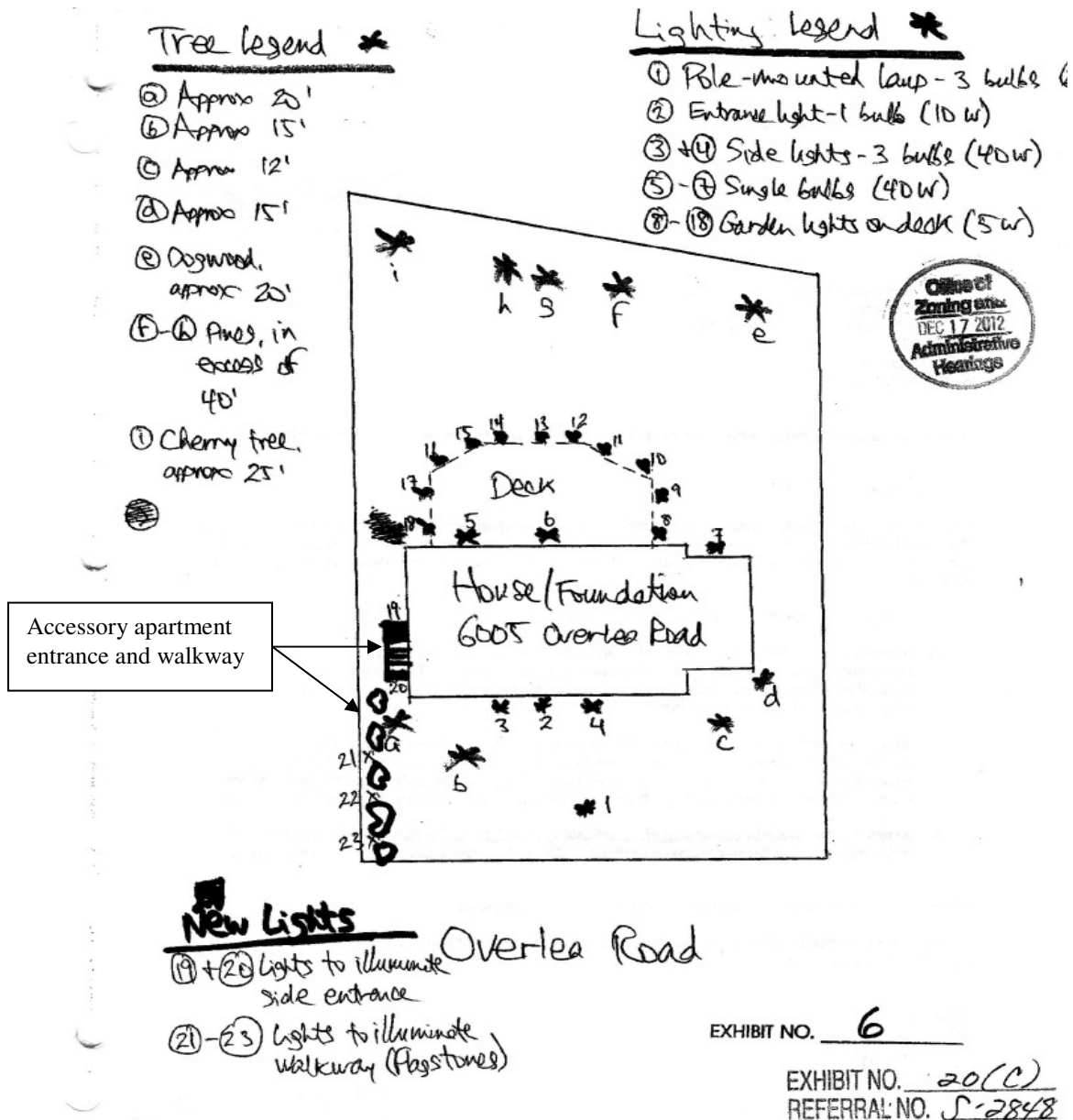
Technical Staff reports (Exhibit 38, p. 13):

The applicant provided a Landscape Plan with the application which has been revised as part of the amendment. The plan shows the locations of existing landscaping on the site. No new plantings are proposed with the application. The property’s landscaping is adequately maintained. The landscape plan falls within the standards expected for a typical one-family home. There are no champion trees on the site. There are no environmental issues, constraints, or concerns association with the applicants’ proposed accessory apartment. The Forest Conservation Law does not apply to this special exception because the property is less than 40, 000 square feet in size.

The proposed access to the accessory apartment is no longer through the garage and is now provided from the side of the house. Lighting is now shown in association with the new entrance. There are two lights to illuminate the side entrance and three lights to illuminate a path to the street (Exhibit 6). As recommended in the previous staff report [Exhibit 15], lighting is now shown between the future access to the apartment and the street. As recommended before, no images of the proposed light fixtures are included. A condition should require that they be of a residential character.

The Landscape and Lighting Plan modified to show the location of the accessory apartment entrance, walkway and additional lighting to illuminate the entrance and walkway is

shown below. (Exhibit 20(c)):



Technical Staff reports (Exhibit 38, p. 12):

Parking for the main dwelling and the accessory apartment can be accommodated with the two-parking spaces on the driveway, the garage which has one space, and with on-street parking on Overlea Road. The proposed special exception use will not have an adverse effect on parking in the area.

Parking along both sides of Overlea Road is restricted between 9:00 a.m. and 5:00 p.m.,

Monday to Friday, to 2 hours. Petitioners agreed to provide the accessory apartment tenant with a parking permit for on-street parking during the restricted weekday periods. Tr. 39-40. Based on this information, the Hearing Examiner concurs with Technical Staff and finds there is adequate off-street parking and ample on-street parking to accommodate the accessory apartment and main dwelling.

E. Traffic Impacts

Technical Staff found that “[t]he proposed accessory apartment meets the transportation related requirements of the Adequate Public Facilities (APF) Ordinance.” Exhibit 38, p. 11. Transportation Staff reported (Exhibit 38, p. 32):

Local Area Transportation Review

Using trip generation rates included in the *Local Area Transportation Review (LATR)/Policy Area Mobility Review (PAMR) Guidelines*, the single-family dwelling on the property is estimated to generate one peak-hour trip during the weekday morning (6:30 a.m. to 9:30 a.m.) and evening (4:00 p.m. to 7:00 p.m.) peak periods. Using the same rates, the proposed accessory apartment is estimated to generate one additional peak-hour trip during the weekday peak periods.

Since the existing house and the accessory apartment together will not generate 30 or more peak-hour trips during the weekday morning and evening peak periods, a traffic study is not required for the subject petition. With documentation of site trip generation as above, the subject petition satisfies the LATR requirements of the APF test.

Policy Area Mobility Review

As noted above, the single-family dwelling and the accessory apartment on the property together will generate less than four peak-hour trips during the weekday morning and evening peak periods. The subject petition therefore is not subject to the PAMR requirements of the APF test.

Due to the small scale of the proposed use, the Hearing Examiner agrees with Technical Staff that the accessory apartment satisfies the LATR and PAMR tests and will have no adverse impact on the area roadways and pedestrian facilities. Exhibit 38, p. 32.

F. Environmental Impacts

As previously discussed, Petitioners are proposing a side entrance, below-grade stairway and flagstone walkway from the street. Technical Staff found that the required modifications will be compatible with the dwelling and surrounding properties. No new plantings or changes to the existing vegetation and plantings shown on the revised Landscaping Plan (Exhibit 20(c)) are proposed. Technical Staff advises that the property is exempt from the Forest Conservation Law (Exhibit 7) and “[t]here are no environmental issues, constraints, or concerns associated with the applicants proposed accessory apartment.” Exhibit 38, p. 13. Based on this evidence, the Hearing Examiner finds that Petitioners’ request will have no adverse environmental impacts.

G. Community Response

There has been no response from the community to the subject petition.

III. SUMMARY OF THE HEARING

Petitioners David Louis Antonioli and Gabriela Romo testified at the public hearing in support of the petition. DHCA Housing Code Inspector, Lynn McCreary, also testified as to compliance with the Housing Code. There was no opposition at the hearing.

A. Petitioner’s Case

Petitioners David Louis Antonioli and Gabriela Romo:

Petitioners adopted the findings and conclusions in the Technical Staff report (Exhibit 15) as their own evidence and agreed to comply with all the conditions set forth in the report. However, Mr. Antonioli sought clarification on the need and location of a separate exterior entrance into the accessory apartment (condition number 4). He testified that they originally proposed to have the tenants go through the existing garage door to access the interior door to the

accessory apartment. They considered replacing the current garage door with a garage door that has a separate access door built into it. He indicated that they will most likely install the new door where they originally proposed to install the new egress window as shown on the left side elevations drawing (Exhibit 4(b)). (The front and left side elevation drawings submitted with the Site Plan were marked as Exhibits 4(a)-(b). Tr. 33. They will explore their options to determine the best location for the accessory apartment entrance and will submit their revised plans to Technical Staff for approval. Tr. 6-13 and 46-47.

Petitioners agreed with the issues and conditions noted in Ms. McCreary's preliminary inspection report dated October 9, 2012 (Exhibit 14). They submitted a copy of their deed (Exhibit 17) and executed an Affidavit of Posting (Exhibit 18). Petitioners were provided with a copy of the letter from Ada DeJesus (DHCA, Licensing and Registration) dated November 6, 2012 (Exhibit 16). Tr. 14-16. Petitioners identified the photographs of the front of his house (Exhibit 9 (a)-(b)) and additional exterior and interior photographs (Exhibits 13 (a)-(g)) taken by Ms. McCreary. Tr. 18-21.

Petitioner identified the Site Plan (Exhibit 4), Landscape and Lighting Plan (Exhibit 6) and Floor Plan (Exhibit 5). Petitioner will modify these plans to show the location of the accessory apartment entrance, walkway and additional lighting to illuminate the walkway and entrance. Tr. 21-24.

Petitioners reviewed the Floor Plan (Exhibit 5) and identified the interior photographs taken by Ms. McCreary. The accessory apartment entrance is located at the end of the hallway and adjacent to the steps leading to the main dwelling. This area is shown in the photograph identified as Exhibit 13(c). The interior door to the accessory apartment and door to main dwelling are secure. They described the unit as a studio-efficiency. The main area includes a

kitchen and living area as shown in photographs identified as Exhibits 13 (d) and 13 (e). The utility room, laundry facilities and full bathroom are accessed from a hallway off the living area. The HVAC and hot water heater for the whole house are located in the utility room which can only be accessed by going through the accessory apartment. The fuse box for the unit is located in the hallway. Tr. 24-31.

Ms. Romo questioned whether it would be possible to install an exterior door to the left of the garage door. Ms. McCreary noted that an additional door on the front of the dwelling would affect the residential character of the single-family dwelling. Petitioners confirmed they will occupy the main dwelling and can only receive compensation for one dwelling unit on the property. Tr. 34-36. Petitioners park on the driveway and will provide the accessory apartment tenant with a parking permit for on-street parking. Tr. 40. Petitioners amended their Statement in support of their application (Exhibit 3) to delete their statement that access to the accessory apartment will be through the garage. There is also a storage area off the garage that will be used by the owners. The main dwelling consists of two levels. The property tax record was marked as Exhibit 19. Tr. 42-44. Petitioners requested that the record remain open until January 2, 2013, to submit amended plans consistent with the conditions of approval in the reports from Technical Staff and DHCA. Tr. 55-56.

B. Public Agency Testimony

Housing Code Inspector Lynn McCreary:

Housing Code Inspector Lynn McCreary testified that she inspected the property on October 8, 2012. The unit is located on the ground level of the dwelling and accessed through the garage door. The footprint of the unit is 434 square feet with 338 square feet of habitable space. Occupancy is limited to no more than two people. Ms. McCreary confirmed that there has to be a

separate egress door into the unit which must also preserve the residential appearance of the dwelling. The smoke detector must be moved away from the kitchen area and closer to the living area. She confirmed three off-street parking spaces (one in the garage and two on the driveway) and plenty of on-street parking available even with the 2 hour limited parking restriction on Overlea Road between 9:00 a.m. to 5:00 p.m., Monday through Friday. She noted that there was plenty of on-street parking when she inspected the property during the restricted day time hours. Tr. 37- 38.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards and conditions are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioners have the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioners will have satisfied all the requirements to obtain the special exception if they comply with the recommended conditions. Exhibit 38.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code 59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use as long as Petitioners comply with the recommended conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code Section 59-G-1.2.1 requires consideration

of the inherent and non-inherent adverse effects of the proposed use at the proposed location, on nearby properties and in the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code Section 59-G-1.2.1. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent physical and operational characteristics of accessory apartments (Exhibit 38, p. 17):

- (1) The existence of the apartment as a separate entity from the main living unit but sharing a party wall with it;

- (2) The provision within the apartment of the necessary facilities, spaces, and floor area to qualify as habitable space under the applicable code provisions;
- (3) A separate entrance and walkway and sufficient exterior lighting;
- (4) Sufficient parking;
- (5) The existence of an additional household on the site with resulting additional activity including more use of outdoor space and more pedestrian, traffic, and parking activity; and
- (6) The potential for additional noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found that by amending the Petition to create a separate exterior entrance as required by DHCA, there are no non-inherent adverse effects arising from the accessory apartment. In support of this conclusion, Technical Staff summarized the evidence as follows (Exhibit 38, pp. 17-18):

In the instant case, there are no adverse effects that will negatively impact the community above and beyond those necessarily inherent to an accessory apartment. The apartment will be located in the basement of the main dwelling and is non-identifiable from the street. The apartment is set up to provide all the spaces and facilities necessary for an apartment use.

The accessory unit has been revised since the original submittal to have a separate entrance when previously it did not. It is no longer entered from the interior of the existing garage and is now entered from the side of the house, requiring a flight of steps down to the basement level. The apartment entrance is now typical of an auxiliary entrance to a main house. There is now a separate lighted walkway associated with the accessory apartment. The light fixtures and level of illumination should be consistent with typical residential standards. Staff recommended in the previous staff report that a separate entrance to the accessory unit be provided consistent with the requirements of the Department of Housing and Community Affairs (DHCA) Memorandum of

October 9, 2012 which is attached. The amended petition provides a separate entrance. The first revised submittal (A) did not meet development standards limiting projections into the side yard, but met the building code. Where as the second revised submittal (B) did not meet the building code for the clear width of the entry stairs, but did meet the development standards concerning projections into the side yard. It must meet both development standards and [the] building code. It must also be consistent with the requirements of DHCA to be adequate.

Parking for the accessory apartment will be sufficient. There is room for two vehicles to park on the property's driveway. There are adequate choices to ensure sufficient neighborhood parking even with the existence of this additional apartment on the block. The tenant will likely park on the street closer to the apartment entrance. This is sufficient.

Based on these findings, Technical Staff concluded (Exhibit 38, p. 18):

The operational and physical characteristics of the proposed accessory apartment are consistent with the inherent characteristics of an accessory apartment use. There are no longer non-inherent adverse effects present in this case. These were to have been absorbed by the tenant, who would have had to enter for the interior of the garage after opening, and then closing, the main garage door. This situation has been eliminated with the creation of a direct entrance to apartment for the side of the house.

The Hearing Examiner agrees with Technical Staff's assessment. Based on these circumstances, and considering size, scale, light, traffic and environment, the Hearing Examiner concludes that there are no non-inherent adverse effects arising from the proposed accessory apartment warranting denial of this petition.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21 General conditions.

§ 59-G-1.21(a) -*A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case*

may be, finds from a preponderance of the evidence of record that the proposed use:

(1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31(a).

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The subject property is covered by the *Bethesda-Chevy Chase Master Plan*, approved and adopted in 1990. For reasons set forth in Part II.C of this report, the Hearing Examiner finds that the planned use, an accessory apartment in a one-family detached home located in the R-60 zone, is consistent with the goals and objectives of the *Bethesda-Chevy Chase Master Plan*.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The proposed special exception use will be in harmony with the general character of the neighborhood. The accessory apartment is fully contained in the basement of an existing dwelling. The proposed side entrance and stairway is typical of an auxiliary entrance into the basement of a one-family home and it is compatible with the existing dwelling and surrounding properties. Thus, it will retain its residential appearance. Occupancy will be limited to no more than two people and therefore it will have only minimal impact on population density and a modest increase in the intensity of use of the property. There is adequate parking and according to Transportation Staff, the proposed special exception will not have an adverse effect on vehicular traffic or pedestrian access or safety in the immediate area. There are no accessory apartment uses within the Staff-defined neighborhood. DHCA reported one accessory apartment (revocation pending) located 0.75 miles south of Overlea Road and outside the staff-defined neighborhood. The Hearing Examiner finds that the addition of the proposed accessory apartment to the neighborhood will not be excessive or change the residential character of the neighborhood. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the surrounding residential neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties*

or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: For the reasons set forth in the answer to the previous section of this report, the Hearing Examiner agrees and finds that the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood provided that the special exception is operated in compliance with the listed conditions of approval.

(6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found: “Based on the nature of the use, the proposed special exception will cause no objectionable noise, vibrations, fumes, odors, dust, or physical activity. The use will cause no objectionable illumination or glare as the provided lighting is residential in character.” Exhibit 38, p. 21. Since the use will be indoors and residential, the Hearing Examiner finds it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

(7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: The staff-defined neighborhood consists of 50 one-family detached homes. Based on a combined reading of the reports by Technical Staff (Exhibit 38) and DHCA

(Exhibit 16), there are no other special exceptions, including accessory apartments, located within the staff-defined neighborhood. DHCA reported one accessory apartment (revocation pending) located 0.75 miles South of Overlea Road and outside the staff-defined neighborhood. Because the proposed use is a residential use by definition, and permitted by special exception in the R-60 Zone, the proposed special exception will not alter the predominantly residential nature of the area. The Hearing Examiner concurs with Technical Staff and finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

(8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area of the subject site.

(9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that “[t]he proposed special exception will be adequately served by existing public services and facilities.” Exhibit 38, p. 22. The evidence supports this conclusion.

(A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in*

its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.

(B) *If the special exception:*

(i) does not require approval of a new preliminary plan of subdivision; and

(i) the determination of adequate public facilities for the site is not currently valid for an impact that is the same or greater than the special exception's impact;

then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.

Conclusion: The special exception sought in this case will not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). As indicated in Part II. E. of this report, Transportation Planning Staff made such reviews and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. For the same reason, PAMR is also satisfied. Therefore, the Transportation

Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: The Hearing Examiner concurs with Technical Staff's conclusion that the "the proposed use is not likely to negatively impact the safety of vehicular or pedestrian traffic as the use will not generate a substantial increase in either form of traffic." Exhibit 38, p. 22. Based on the evidence of record, especially the availability of adequate parking (three off-street and sufficient on-street parking in front of Petitioner's home) and the limited number of additional trips generated by the special exception, the Hearing Examiner finds that the proposed use will not reduce the safety of vehicular or pedestrian traffic.

C. Specific Standards

The testimony and the exhibits of record, especially the revised Technical Staff Report (Exhibit 38), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Conclusion: Only one accessory apartment is proposed.

- (2) *The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*
- (i) *The lot is 2 acres or more in size; and*
 - (ii) *The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The accessory apartment is located in the basement of an existing one-family detached dwelling and therefore shares a wall in common, as required for a lot of this size (under one acre).

- (3) *An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in the basement of an existing dwelling.

- (4) *The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: The house was built in 1982. Exhibit 19. It therefore meets the “5 year old” requirement.

- (5) *The accessory apartment must not be located on a lot:*
- (i) *That is occupied by a family of unrelated persons; or*
 - (ii) *Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
 - (iii) *That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The proposed use will not violate any of the provisions of this subsection.

- (6) *Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

Conclusion: Petitioner submitted revised plans which provide for a separate exterior entrance, as required by DHCA (Exhibit 16). The entrance and stairway will be located on the south side of the dwelling. Technical Staff reports that the proposed side entrance is distinct and separate from the main dwelling entrance and typical of an auxiliary entrance into a basement level of a single-family dwelling. Thus, the Hearing Examiner finds, as did Technical Staff, there will be no change to the residential appearance of the dwelling.

- (7) *All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

Conclusion: The only proposed external modification is the proposed side entrance and stairway located on the south side of the dwelling. The Hearing Examiner agrees with Technical Staff and finds that the proposed modifications “will be compatible with the existing dwelling and surrounding properties.” Exhibit 38, p. 25.

- (8) *The accessory apartment must have the same street address (house number) as the main dwelling.*

Conclusion: The accessory apartment will have the same address as the main dwelling.

- (9) *The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet. The 1,200 square feet limitation does not apply to an accessory apartment located in a separate existing accessory structure located on the same lot as the main dwelling. The maximum floor area for a separate existing accessory structure must be less than 50 percent of the*

total floor area of the main dwelling, or 2,500 square feet, whichever is less.

Conclusion: Petitioner estimated that the proposed accessory apartment will be approximately 440 square feet in size. DHCA reported the unit had 434 square feet of floor area, 338 square feet of which is habitable space. Exhibit 16. Thus, it is well below the 1,200 square foot maximum allowed for an accessory apartment. According to the SDAT records for the property (Exhibit 19), the enclosed floor area for the two-story home is 2,796 square feet. The Hearing Examiner finds, as did Technical Staff, that the proposed accessory apartment is subordinate to the main dwelling.

59-G § 2.00(b) Ownership Requirements

- (1) *The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioners will live in the main dwelling on the property.

- (2) *Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to the deed submitted into the record, Petitioners purchased the property on May 17, 2010. Exhibit 17. The one-year rule has therefore been satisfied.

- (3) *Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioners will receive compensation for occupancy of only one dwelling unit as a condition of the special exception.

- (4) *For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: Petitioners submitted a deed dated May 17, 2010, evidencing joint ownership of the subject property. Exhibit 17. Therefore, the Hearing Examiner concludes that this condition has been met.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable.

59-G § 2.00(c) Land Use Requirements

- (1) *The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

Conclusion: The subject lot is approximately 8,659 square feet in size and therefore satisfies the 6,000 square feet minimum lot size. It is in the R-60 Zone which permits accessory apartments by special exception. Technical Staff found the proposed special exception request as revised to include the side entry egress door conforms to “the development standards of the R-60 zone with the exception of the [4’ wide] entrance stairs which project into the side yard setback 1’ foot further than allowed (Section 59-B-3.1) as shown in the revised submittal (A). A variance is therefore required.” Exhibit 38, pp. 26-27. In response to the revised Technical Staff report, Petitioner amended the Petition and submitted revised plans (Exhibit 41(b))

reducing the width of the stairway from 4' to 3', the maximum allowed for projections in the side yard setback and minimum required under the building code. As confirmed by DPS, the 8 inch retaining wall which is necessary for the below-stairway is excluded from the maximum 3' allowed for projections into the minimum side yard setback. DPS considers the retaining wall and guardrails "no different than a retaining wall with a fence which can be located on a property line with no setback required." Exhibit 44. DPS issued a building permit (Permit No.: 631162) for the exterior stairway on April 10, 2013. Exhibit 41(a). Based on the evidence of record, the Hearing Examiner finds that the proposed special exception request as amended (Exhibits 41(a)-(b) and 42)) conforms to all applicable development standards of the R-60 Zone. The following table from the Technical Staff report (Exhibit 38, pp. 14-15), as corrected regarding projections in the minimum side yard setback, demonstrates compliance with all development standards for the R-60 Zone:

Development Standard	Min/Max Required	Provided	Applicable Zoning Provision
Maximum Building Height	2.5 stories	2 stories	§59-C-1.327
Minimum Lot Area	6,000 sq. ft.	8,659 sq. ft.	§59-G-2.00(c)(1) §59-C-1.322(a)
Minimum Lot Width at Front Building Line	60 ft.	74 ft.	§59-C-1.322(b)
Minimum Lot Width at Street Line	25 ft.	75 ft.	§59-C-1.322(b)
Minimum Setback from Street	25 ft.	29.9 ft.	§59-C-1.323(a)
Minimum Rear Yard Setback	20 ft.	~54 ft.	§59-C-1.322(b)(2)
Setback from Property Line Side	8 ft. Combined 18 ft.	8.1' 18'	§59-C-1.322(b)(1)
Projection of Stairway into Side Yard	3 ft.	3 ft.	§59-B-3.1 (b) and (c)
Maximum Building coverage	35 percent	18 percent	§59-C-1.328
Maximum Floor Area for Accessory Apartment	1,200 sq. ft.	440 sq. ft.	§ 59-G-2.00(a)(9)

Parking	4 total	2 in driveway 1 in garage 2 on street	§ 59-G-2.00(c)(3)
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(2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).

Conclusion: Based on a combined reading of the reports by Technical Staff (Exhibit 38) and DHCA (Exhibit 16), there are no other special exceptions, including accessory apartments, located within the staff-defined neighborhood. DHCA reported one accessory apartment (revocation pending) located 0.75 miles South of Overlea Road and outside the staff-defined neighborhood. Because the proposed use is a residential use by definition, and permitted by special exception in the R-60 Zone, the proposed special exception will not alter the predominantly residential nature of the area. The Hearing Examiner concurs with Technical Staff and finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

(3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:

- (i) More spaces are required to supplement on-street parking; or*
- (ii) Adequate on-street parking permits fewer off-street spaces.*

Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.

Conclusion: The Hearing Examiner concurs with Technical Staff's conclusion that there is adequate off-street parking (two spaces on the driveway and one space in the

garage) and sufficient on-street parking available. The Hearing Examiner finds that the minimum requirement of two (2) off-street parking spaces has been met.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in Article 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. D of this Report, the Housing Code Inspector's report (Exhibit 13) specifies certain conditions. Petitioner agreed to meet all conditions, and will comply with directives of the Housing Code Inspector.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Gabriela Romo and David Louis Antonioli, BOA No. S-2848, which seeks a special exception for an accessory apartment to be located at 6005 Overlea Road, Bethesda, Maryland, be GRANTED, with the following conditions:

1. The Petitioners are bound by their testimony, representations and exhibits of record to the extent that testimony and evidence are identified in this Report and Recommendation;
2. The Petitioners must comply with the conditions set forth in the Memorandum of Lynn McCreary, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 16):
 - a. The property has a one car garage. The driveway will accommodate two additional vehicles parked back to front. There is also on-street parking available.
 - b. The footprint of the efficiency unit consists of 434 square feet of floor space. There is a total of 338 square feet of habitable space which would allow for the occupancy of two people.
 - c. Accessory Apartment standards require a clear path of access to the outside. The current entry to the unit is through the garage. An egress door is required. The appearance of the single family house must be preserved.
 - d. Relocate the smoke detector away from the kitchen area.

3. The Petitioners must provide a separate exterior entrance and stairway to the accessory apartment located on the south side of the dwelling as proposed and in accordance with the revised plans (e.g., detailed construction drawings) (Exhibit 41(b)) submitted April 10, 2013.
4. The Petitioners must provide residential outdoor lighting to illuminate the walkway, stairway and at the accessory apartment door as shown on the revised Landscape and Lighting Plan (Exhibit 20(c)).
5. The Petitioners must comply with the determination of the Housing Code Inspector as to the limits on occupancy in the accessory apartment and must comply with any other directions of the Housing Code Inspector to ensure safe and code-compliant occupancy;
6. Based on 338 square feet of habitable space, no more than two people may occupy the accessory apartment.
7. The Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;
8. The accessory apartment must not be located on a lot that is occupied by a family of unrelated persons, or where there is a guest room for rent, a boardinghouse or registered living unit;
9. The Petitioners must not receive compensation for the occupancy of more than one dwelling unit; and
10. The Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: May 3, 2013

Respectfully submitted,



Tammy J. CitaraManis
Hearing Examiner